



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SEP 21 2009

200951041

Uniform Issue List: 408.03-00

SET:EP:RA:T1

Legend:

Taxpayer A = *****
IRA B = *****
Financial Institution C = *****
Amount 1 = \$*****
Amount 2 = \$*****

Dear *****:

This letter is in response to a request for a letter ruling dated *****, as modified and supplemented by additional correspondence dated *****, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age **, asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to his reliance on the expertise of his financial adviser which led to Amount 1 being placed in a non-IRA account. Taxpayer A further represents that Amount 1 has not been used for any purpose.

Taxpayer A maintained IRA B, an individual retirement annuity under section 408(b) of the Code, with Financial Institution C. In *****, Taxpayer A contacted his financial adviser with concerns regarding the financial stability of Financial Institution C. Taxpayer A's advisor was also the servicing agent for his IRA annuity with Financial Institution C. Due to the financial instability of Financial Institution C, Taxpayer A and his financial adviser agreed that Taxpayer A should liquidate his annuity. Taxpayer A's intention was to change his IRA investment because of the financial instability of Financial Institution C. Taxpayer A relied on his financial adviser to provide him with the necessary forms to liquidate the annuity and move the funds to another IRA investment. Unfortunately, in reviewing the annual statements provided by Financial Institution C and in discussions with a representative of Financial Institution C the financial advisor did not realize that the annuity was an IRA annuity. As a result, the financial advisor provided Taxpayer A with forms that placed the distribution in a non-IRA brokerage account. Taxpayer A relied on the recommendation of his financial advisor and the funds were placed in a non-IRA account.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 2 was due his reliance on his financial adviser which led to Amount 2 being placed in a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 2 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

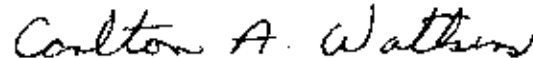
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact *****, (I.D. #*****), at (***)
-*.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1